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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,242	03/24/2004	Hisao Kikuchi	29284/270	4524
23838	7590	09/08/2004	EXAMINER	
KENYON & KENYON 1500 K STREET, N.W., SUITE 700 WASHINGTON, DC 20005			PHAN, TRI H	
			ART UNIT	PAPER NUMBER
			2661	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/807,242

Applicant(s)

KIKUCHI ET AL.

Examiner

Tri H. Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 03/24/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claims 3 and 4 are objected to because of the following informalities: Applicant is respectfully suggested to spell out the abbreviations of "BE", since they are not defined either in the specification. Appropriate correction is required.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1 and 6-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 17-25 of copending Application No. 09/794,171.

For claim 1 of the claimed invention, the claim 1 of copending application number 09/794,171 discloses a network system having a plurality of nodes connected therewith and being operated by their communication application programs, each of nodes comprises band information obtaining means for obtaining a communication attribute required for controlling a communication band from the communication application program, band information storing means for storing the communication attribute obtained by the band information obtaining means as the band information of the local node, band information delivering means for delivering the band information of the local node to the other nodes connected to the network, band information receiving means for receiving the band information delivered by the band information delivering means of another node and storing the band information of another node in the band information storing means, band traffic calculating means for calculating the current band traffic on the basis of the band information of the current node stored in the band information storing means and the band information of another node and the band traffic calculating means serving to assume the

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obtained band traffic as the band traffic of the network and control the band on the band traffic (see claim 1 of 09/794,171).

Applicant's claim 1 merely broadens the scope of claim 1 of the copending application 09/794,171 by replacing the terms "*communication attribute*" of the copending application 09/794,171 with the terms "*band information*" for claim 1 of the claimed invention (see lines 4 and 6) and by replacing the terms "*another nodes*" of the copending application 09/794,171 with the terms "*other local nodes*" for claim 1 of the claimed invention (see lines 11 and 12); wherein the "*communication attribute*" is the part of the "*band information*". It has been held that the element and its function is obvious expedient if the elements perform the same function as before. *In re Karlson*, 136 USPQ 184(CCPA). Also note *Ex parte Rainu*, 168 USPQ 375(Bd. App. 1969); broadening a reference element whose function is not needed would be an obvious variation.

For claims 6-8 of the claimed invention, the claims 5, 9 and 13 of copending application number 09/794,171 discloses a communication band control method for controlling a communication band of a network system has a plurality of nodes connected therewith, each of the nodes taking the steps of obtaining a communication attribute required for controlling a communication band from a communication application program, storing the obtained communication attribute as the band information of the local node and delivering the band information to all the nodes connected with the network, storing the band information delivered by another node as the band information of another node, obtaining the current band traffic on

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the basis of the band informations of the local node and another node stored in the above steps and assuming the obtained band traffic as the traffic of the network, determining the band on the traffic, and performing the band control (see claim 5 of 09/794,171); wherein the delivery of the band information of the local node to another node is executed in a broadcasting manner (see claim 9 of 09/794,171); wherein an identifier for specifying an application program is stored with said band information (see claim 13 of 09/794,171).

Applicant's claim 6 merely broadens the scope of claim 5 of the copending application 09/794,171 by replacing the terms "*communication attribute*" of the copending application 09/794,171 with the terms "*band information*" for claim 6 of the claimed invention (see lines 4 and 6), by replacing the terms "*another nodes*" of the copending application 09/794,171 with the terms "*other local nodes*" for claim 6 of the claimed invention (see lines 9, 10 and 12-13), by replacing the terms "*the obtained band traffic*" (which prefers to the "current band traffic" in the step of "obtaining the current band traffic ..." in line 14) of the copending application 09/794,171 with the phrase "*current band traffic ...is obtained to be the traffic of the network*" for claim 6 of the claimed invention (see line 14) and by replacing the methods "*determining the band on the traffic and performing the band control*" of the copending application 09/794,171 with the method "*controlling the band traffic*" for claim 6 of the claimed invention (see lines 15-16); wherein the "*communication attribute*" is the part of the "*band information*". It has been held that the element and its function is obvious expedient if the elements perform the same function as before. *In re Karlson*, 136 USPQ 184(CCPA). Also note *Ex parte Rainu*, 168 USPQ

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375(Bd. App. 1969); broadening a reference element whose function is not needed would be an obvious variation.

For claim 9 of the claimed invention, the added claim 15 of copending application number 09/794,171 discloses a network system having a plurality of local nodes connected therewith, the local nodes each including communication application programs, by which the local node is operated, each of the local nodes comprises a band information obtaining unit which obtains band information required for controlling a communication band from the communication application program, a band information managing table which stores the band information obtained by the band information obtaining unit as the band information of the local node, a band information delivery unit which delivers the band information of the local node to the other local nodes connected to the network, a band information receiver which receives the band information delivered by the band information delivery units of the other local nodes and storing the band information of the other local nodes in the band information managing table, a band traffic calculator which calculates a current band traffic for the local node to which it belongs on the basis of the band information of the local node to which it belongs and the band information of the other local nodes stored in the band information managing table and the band traffic calculator assuming current band traffic that is obtained to be the band traffic of the network and controlling the band traffic of the local node to which it belongs on the basis of that assumption, wherein each of the local nodes includes a communication quality obtaining unit which obtains a communication data packet amount to be observed by the local node, the communication quality thereof, and a communication quality attribute required for controlling

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the communication quality, and a communication quality correcting unit which calculates, based on the obtained communication quality, a calculated result comprising a band traffic of effective communication data, the band traffic thereof corresponding to an obtained communication data packet of the local node excepting a band traffic occupied by various protocol control data including transmitted data occurring in communicating application communication data, and determines the obtained communication quality attribute so that the calculated result is made equal to the band traffic obtained by the band traffic calculator, and the communication quality correcting unit being adapted to determine a communication quality to be guaranteed by assuming the band traffic obtained by the band traffic calculator as the band traffic of the effective communication data, for controlling the band traffic according to the communication quality (see the added claim 15 of 09/794,171).

Applicant's claim 9 merely broadens the scope of claim 15 of the copending application 09/794,171 by eliminating the elements and their functions "*communication quality obtaining unit*" and "*communication quality correction unit*". It has been held that the omission of the elements and their functions are obvious expedient if the remaining elements perform the same function as before. *In re Karlson*, 136 USPQ 184(CCPA). Also note *Ex parte Rainu*, 168 USPQ 375(Bd. App. 1969); omission of a reference element whose function is not needed would be an obvious to one skilled in the art.

Claim Rejections - 35 USC § 103

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Nguyen et al.** (U.S.6,594,279).

- In regard to claims 2 and 5, **Nguyen** discloses in Figs. X-Y and in the respective portions of the specification about the apparatus and method for transporting IP datagrams over SONET to link IP-based applications with guaranteed quality of service characterized by a deterministic end-to-end transfer delay for IP services; wherein the bandwidth allocation manager 'BWM' and the bandwidth client 'BWC' ("*band information delivery means*"; For example see col. 4, lines 50-65) exchange the bandwidth management message ("*band information*"; For example see Fig. 2; col. 6, lines 10-12) for updating information at regular traffic intervals ("*sending the band information at regular intervals*"; For example see col. 9, lines 1-8) as disclosed in claim 5 of the claimed invention. Though, **XXX** does disclose about the method for providing scalable and reliable service for IP datagrams through the use of data type and application process (For example see col. 6, lines 3-9); but does not explicitly disclose about the "*application program number*" or "*process ID list*"; however, it would have been obvious to the person of ordinary skill in the art at the time of the invention was made to implementing information such as "*application program number*" or "*process ID list*" into the message body as

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information about the characteristics of the service of the message management service taught by **Nguyen** to specify the specific services of the application and process for controlling the management bandwidth as system engineering choices.

Allowable Subject Matter

6. Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten or amended to overcome the above objection set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri H. Phan, whose telephone number is (571) 272-3074. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas W. Olms can be reached on (571) 272-3079.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314


Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office, whose telephone number is (703) 305-3900.

A handwritten signature in black ink, appearing to read 'Tri H. Phan', with a horizontal line drawn underneath the name.

Tri H. Phan
August 31, 2004

A handwritten signature in black ink, appearing to read 'Dang Ton', with a stylized, cursive script.

DANG TON
PRIMARY DESIGNER